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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

REIFSNYDER, DAVID A

ART UNIT PAPER NUMBER

1723

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/623,326

Applicant(s)

TUSZKO ET AL.

Examiner

David A Reifsnnyder

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: The declaration filed in this application is a declaration for U.S. Patent Application No. 10/131425 which is the parent of this U.S. Patent Application No. 10/623326. The declaration from a parent application can only be used if the child application is a continuation or a divisional application. Since this application includes subject matter which was not in U.S. Patent Application No. 10/131425, this application is a continuation-in-part of U.S. Patent Application No. 10/131425 and needs its own declaration.

Pro-Se

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. **Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application**, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication

Art Unit: 1723

is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because they are clearly informal.

There is hand written words in the formulas in the drawings which should not be there. Instead of those formulas reference numbers should be there. Of course, those reference numbers then have to be added to the specification. In addition, it can not be determined as to where some of the reference numbers point to. For example, reference number 16 points in three different directions in Fig. 3. Also, sometimes two reference numbers points to the same location. For example, see reference number 13 and reference number 15 in figure 4. Another problem is that figure 1 includes the words SET No1 (thrice), Set No 2 (twice) and SET No. 3 (once). This words do not point to anything and do not make sense.

These are just examples of problems with the drawings, the applicant needs to check and correct his drawings carefully.

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the

Art Unit: 1723

list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Objections

Claim 8 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must refer to previous claims in the alternative only. See MPEP § 608.01(n). Accordingly, claim 8 has not been further treated on the merits.

Continuing Data

The continuing data in the first 12 lines of page 1 of the specification is incorrect and needs to be corrected. For example, U.S. Patent Application No. 10/131425 has issued as U.S. Patent No. 6,596,170 and is not abandoned as the applicant states it is. Furthermore, U.S. Patent No. 6,596,170 is the parent of abandoned Patent Application No. 09/721780; however, the applicant fails to mention that in his continuing data section.

Specification

The following is a quotation of 37 CFR 1.71(a):

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

The specification is objected to under 37 CFR 1.71 (a) because **everything after page 4, line 20 it can not be understood.** For example, what is a plurality of "fundamental units 16". It appears that a "fundamental unit" comprises adjacent "cylindrical telescopic units". So the next question is what defines a "cylindrical telescopic unit"? The parent application taught a "cylindrical telescopic tube" and it can not be understood why the child application changed the word "tube" to "unit". The word "tube" is understandable while the word "unit" needs to be defined by the applicant. The applicant has not defined the word "unit" in his specification. In addition, what defines a "fundamental unit"? It appears, that the applicant is defining a "fundamental unit" as a "cylindrical telescopic tube" that has been changed somewhat. Furthermore, if 12A and 12B is the "fundamental unit" as the specification alleges what is the "H" element in Fig. 3. Furthermore, Fig. 3 includes two elements 13 which are not even discussed in the specification. Since the elements 13 have the same number they must be the same element but it appears that the angle of the upper element 13 in Fig. 3 is not the same as the angle of the lower element 13 in Fig. 3. Lastly, the applicant includes hand written symbols in the specification that are not legible and would not be printed on any patent issuing from this application. It appears as if those hand written things are a major part of the applicant's application. Examples of the handwritten are the Greek symbols α , β and γ and it can not be understood why the applicant chose to write those symbols instead of typing them.

The above are only **examples** of problems with the part of the specification which does not include the claims. **Problems with the claims will be addressed later.**

Art Unit: 1723

There are many more problems with the specification, the specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully. No New matter can be added to the specification; however, the Examiner does not believe that the applicant can write an enabling specification without adding new matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-7 are rejected under 35 USC 112, 1st paragraph for the reasons given above in the objections under 37 CFR 1.71.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-7 can not be understood at all as it appears that claims 1-7 mix and max conventional cyclone types with what the applicant feels is the improvement to those cyclones. Each conventional cyclone that the applicant adds an improvement phrase to needs to have its own independent claim.

Regarding claim 1; a claim has to be a single sentence and it can not refer back to another Patent. Also, what are "fundamental telescopic units" and how do they create a "multi-compartment separation chamber". Lastly, the recitation of "so that each compartment can be seen as separated cyclone" does not make sense. Actually, all of claim 1 does not make sense.

Regarding claim 2; that is clearly a mixing and matching of conventional cyclones. Furthermore, it is vague and indefinite as to what is meant by the recitation of "another type of housing".

Regarding claim 3; besides the grammatical issues with the claim it is noted that fundamental telescopic units were never defined as a cylinder. Furthermore, the recitations of "the fundamental telescopic unit" and "the same material" both lack antecedent basis.

Regarding claim 4; besides the grammatical issues with the claim, the claim can not be understood and the recitations of "the longitude axial wall section", "the fundamental unit", (i.e. claim 1 claimed a plurality of fundamental units) "the angle α " "the angle β " and "the angle γ " all lack antecedent basis.

Regarding claim 5; claim 5 does not make sense. Furthermore, the recitation of "the unit upper portion" lacks antecedent basis. In addition, it is not proper to refer to Embodiment 1, and clearly that is mixing and matching hydrocyclone types. Also, the recitation of "Set No. 1 of angle" does not make sense. Lastly, the recitation of "Then to obtain the best cyclone performance" does not make sense and is not claiming anything.

Art Unit: 1723

Regarding claim 6; claim 6 does not make sense. In addition, it is not proper to refer to Embodiment 2, and clearly that is mixing and matching hydrocyclone types. Also, the recitation of "the Set No. 2 of angles" lacks antecedent basis. Lastly, the recitation of "to obtain the worst cyclone performance" does not make sense and is not claiming anything.

Regarding claim 7; claim 7 does not make sense. In addition, it is not proper to refer to Embodiment 1, and clearly that is mixing and matching hydrocyclone types. Also, the recitation of "Set No. 3 of angles $\alpha \beta \gamma$ to be between set No. 1 and Set No. 2" does not make sense. Lastly, the recitation of "to obtain the worst cyclone performance" does not make sense and is not claiming anything. Lastly, the recitations of "the unit" (i.e. claim 1 claimed a plurality of fundamental units) "the angles $\alpha \beta \gamma$ " and "the angle α " all lack antecedent basis.

The above are only examples of problems with the claims there are many more.

The claims are replete with terms which are not clear, concise and exact. The claims should be revised carefully. No New matter can be added to the claims; however, the Examiner does not believe that the applicant can write proper claims without adding new matter.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re*

Art Unit: 1723

Ockert, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claim 2 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6,596,170 B2. This is a double patenting rejection.

Note: For the above rejection it is assumed that the applicant actually is trying to change the claim 1 type of hydrocyclone, which is a hydrocyclone with a cylindrical upper portion and a conical lower portion to the type of hydrocyclone which has a cylindrical upper portion and a cylindrical lower portion.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 and 4-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,596,170 B2. Although the conflicting claims are not identical, they are not patentably distinct

Art Unit: 1723

from each other because the only claimed difference between claim 1 and claim 1 of U.S. Patent No. 6,596,170 B2, is that the hydrocyclone of claim 1 is the type of cyclone which has a **cylindrical** upper portion and a **conical** lower portion while the hydrocyclone of claim 1 of U.S. Patent No. 6,596,170 B2 is the type of cyclone which has a **cylindrical** upper portion and a **cylindrical** lower portion. It is considered that it would have been obvious to one having ordinary skill in the art at the time of the invention to have to have used the instantly claimed telescopic units of the hydrocyclone of the type claimed in of U.S. Patent No. 6,596,170 B2 on any conventional hydrocyclone, such as a hydrocyclone which has a **cylindrical** upper portion and a **conical** lower portion. Furthermore, regarding claims 4-7 it can not be understood what the applicant is trying to claim; however, the plurality of cylindrical telescopic tubes as claimed in claim 1 of U.S. Patent No. 6,596,170 B2 inherently include angles between adjacent cylindrical telescopic tubes. It does not appear as if claims 4-7 claim anything about the angles, except that they are there.

Claim 3 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,596,170 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only claimed difference between claim 1 and claim 3 of U.S. Patent No. 6,596,170 B2, is that the hydrocyclone of claim 3 is the type of cyclone which has a **cylindrical** upper portion and a **conical** lower portion while the hydrocyclone of claim 1 of U.S. Patent No. 6,596,170 B2 is the type of cyclone which has a **cylindrical** upper portion and a **cylindrical** lower portion. It is considered that it

Art Unit: 1723

would have been obvious to one having ordinary skill in the art at the time of the invention to have to have used the instantly claimed telescopic units of the hydrocyclone of the type claimed in of U.S. Patent No. 6,596,170 B2 on any conventional hydrocyclone, such as a hydrocyclone which has a cylindrical upper portion and a conical lower portion.

Potential Allowable Subject Matter

Since this is a pro-se applicant if there was allowable subject matter in the disclosure the Examiner would draft an allowable claim for the applicant. However, since the disclosure including the drawings is non-enabling it can not be determined whether there is any allowable subject matter, and therefore an allowable claim can not be drafted. Furthermore, since this is a continuation-in-part of an allowed application there is a good chance that if the disclosure of this application could be understood it would include allowable subject matter. If the applicant has a hard time writing an enabling disclosure it is once again suggested that he secure the services of a registered patent attorney or agent to prosecute the application.

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tuszko et al. who is the parent of this continuation-in-part application. Coleman et al. who discloses a hydrocyclone separator which is designed according to certain parameters.


Art Unit: 1723

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Reifsnyder whose telephone number is (571) 271-1145. The examiner can normally be reached on M-F 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda M Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David A Reifsnyder
Primary Examiner
Art Unit 1723

DAR